92-1494
NO.

FILED
MAR 11 1993
OFFICE OF THE CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1992

STANFORD J. BOLDEN,
Petitioner

versus

OFFSHORE SPECIALTY FABRICATORS, INC.,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. **Does the Fifth Circuit's requirement for seaman status of permanent assignment to a vessel violate this Honorable Court's instruction in *McDermott International, Inc. v. Wilander,* 111 S. Ct. 807 (1991), that a seaman only need have an employment-related connection to a vessel?**

   The Fifth Circuit's insistence on permanent assignment runs counter to this Court's opinion in *Wilander*, and furthermore has never been applied consistently even within the Fifth Circuit. Its ruling in the instant case is also contrary to decisions arising in other Circuits.

2. **Whether petitioner, Stanford J. Bolden, should have been denied seaman status by summary judgment?**

   Mr. Bolden's work activities were remarkably similar to those of the plaintiff in *Wilander.* Both were painter-sandblasters working offshore. Considering the facts of both of these cases, it is clearly arbitrary to allow a *jury* to find the *Wilander* plaintiff was a seaman, while Mr. Bolden's claim is terminated by summary judgment.

LIST OF OTHER PARTIES

In addition to petitioner and respondent, the other parties to this proceeding are Texaco, Inc.; B & C Boat Rentals, Inc. (listed in the Complaint as B & C Marine); and Aetna Casualty & Surety Company. Texaco, Inc. and B & C Boat Rentals, Inc., were dismissed by summary judgment and petitioner does not contest this dismissal. Aetna Casualty & Surety Company intervened in the lawsuit for reimbursement of benefits paid to petitioner.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, Stanford J. Bolden ("Mr. Bolden"), the plaintiff below, prays that a writ of certiorari issue to review the decision of the Fifth Circuit Court of Appeals.

OPINIONS BELOW

The opinions of the District Court for the Eastern District of Louisiana and the Fifth Circuit Court of Appeals are not reported. These opinions are reproduced in the appendix ("App.") attached hereto. The District Court opinion is reproduced at App. A-1, and the Court of Appeals opinion is reproduced at App. A-12.

JURISDICTION OF THIS COURT

The judgment of the Court of Appeals for the Fifth Circuit was entered on December 11, 1992. The jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED IN THE CASE

The Jones Act, 46 U.S.C. § 688:

> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

STATEMENT OF THE CASE

In its recent landmark decision of *McDermott International, Inc. v. Wilander,* 111 S. Ct. 807 (1991), this Honorable Court explained that the "key to seaman status is employment-related connection to a vessel in navigation." *Id.* at 817. This Court explicitly did not "define this connection in all details." *Id.* Already, the courts and commentators have disagreed over the degree of connection to a vessel necessary for seaman status.[1] The instant case squarely presents this question.

Significantly, like the plaintiff in *Wilander,* petitioner, Stanford Bolden, is a sandblaster-painter. App. A-18. He was employed by Offshore Specialty Fabricators, Inc. ("Offshore"). At the time of his accident, he and the other members of his crew were painting a stationary platform in the Gulf of Mexico owned by Texaco, Inc. App. A-23. To accomplish this task, Mr. Bolden and the Offshore crew were assigned to the M/V JOHN B, an 85-90 foot tugboat owned by B & C Boat Rentals and time chartered by Offshore. App. A-25, A-17.

Mr. Bolden testified he worked off of the JOHN B for almost half of his employment. App. A-32. Offshore's records proved the employment covered 37 percent of Mr. Bolden's work for Offshore, spanning 408 hours over six weeks and several hitches. App. A-40.

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[1] *Compare Bach v. Trident Steamship Co.,* 947 F.2d 1290 (5th Cir. 1991), *cert. denied,* 112 S. Ct. 1996 (1992), *with Evans v. United Arab Shipping Co.,* 767 F. Supp. 1284 (D.N.J. 1991); *see also* Madrid, *Seaman Status: The Supreme Court Recharts Its Course:* Wilander *and* Gizoni, 51 La. L. Rev. 1149, 1166 (1991) ("It remains to be seen what effect this decision may have on the disjunctive first prong of the *Robison* test"); Engerrand, *Seaman Status Reconstructed,* 32 S. Tex. L. Rev. 169, 183 & n.92 (1991).

Mr. Bolden was not assigned to the Texaco platform. The defendants admitted that he was not an employee of Texaco or any other petroleum subcontractor on the platform. App. A-41. In fact, Offshore admitted Mr. Bolden was under its sole supervision. App. A-41. Mr. Bolden testified he took orders from Offshore personnel and no one else on the platform. App. A-31,33. All of Mr. Bolden's tools were provided by his employer, Offshore, and stored on the JOHN B. App. A-26,28. Mr. Bolden testified he had little contact with the other platform workers. App. A-32.

On the other hand, Mr. Bolden's connection to the JOHN B was substantial. He testified that when he was first transported to the platform, he immediately went to the JOHN B to stow his gear. App. A-24. Thereafter, he lived off the JOHN B for the next six weeks. He slept on the boat and ate all of his meals on the boat. App. A-25. His tools were stored on the boat, App. A-26, and much of his work occurred on the boat. App. A-27,28. He even sometimes assisted the deck hands in their work. App. A-33.

Perhaps most importantly, the JOHN B can only be classified as a "paint boat." The mission of the JOHN B was the facilitation of the very painting and sandblasting operations that Mr. Bolden was performing. The JOHN B was not a "floating hotel" for platform workers. It was chartered by Mr. Bolden's employer; not by the platform owner, Texaco. App. A-17. It provided living quarters and a base of operations for Offshore employees while they worked in the Gulf of Mexico. App. The task of painting and sandblasting could not have been accomplished without the vessel.

Mr. Bolden's employer, Offshore, filed a motion for summary judgment on the question of seaman status. Other defendants filed motions for summary judgment at

the same time. Offshore contended that Mr. Bolden was not a seaman because he was not "permanently assigned" to the vessel, a requisite for seaman status under Fifth Circuit precedents. The District Court granted Offshore's motion for summary judgment, ruling that Mr. Bolden had only a transitory connection to a vessel and did not perform a substantial amount of work aboard a vessel. App. A-9.

The Fifth Circuit affirmed the decision of the District Court in an opinion entered on December 11, 1992. The Fifth Circuit held that to qualify as a seaman Mr. Bolden would have to demonstrate he was either permanently assigned to a vessel or a fleet of vessels *or* that he performed a substantial amount of his work on a vessel. Although the Fifth Circuit found that the JOHN B was a "paint boat" and that Mr. Bolden contributed to the function of the boat, it held that Mr. Bolden was not "permanently attached" to the JOHN B or did not perform substantial work aboard the JOHN B. App. A-14. Mr. Bolden now petitions this Court to reverse the decision of the Fifth Circuit.

REASONS FOR GRANTING THE WRIT

1. Certiorari should be granted because the issue of the degree of connection to a vessel necessary for seaman status is unresolved after *Wilander* and causing disputes among the Circuits.

This Honorable Court should grant petitioner's writ of certiorari to address the question left unanswered in *Wilander,* namely, the extent of the connection to a vessel necessary to qualify for seaman status. This issue has never been dealt with uniformly by the courts, and, in the wake of *Wilander,* is already creating sharp differences in the Circuits.

The Jones Act, 46 U.S.C. § 688, provides a "seaman"

with a negligence cause of action against his employer. Almost as often as the courts have been asked to construe the term "seaman," the courts have lamented that the term was not defined by Congress. T. Schoenbaum, *Admiralty and Maritime Law* § 5-5, at 173 (1987). The Fifth Circuit ennunciated one of the more frequently applied criteria for determining who is a seaman in *Offshore Company v. Robison*, 266 F. 2d 769 (5th Cir. 1959). The Fifth Circuit determined that seaman status should be granted to any maritime worker who

> was assigned permanently to a vessel (including special purpose structures not usually employed as a means of transport by water but designed to float on water) or performed a substantial part of his work on the vessel; and (2) if the capacity in which he was employed or the duties which he performed contributed to the function of the vessel or to the accomplishment of its mission, or to the operation or welfare of the vessel in terms of its maintenance during its movement or during anchorage for its future trips.

Robison, 266 F.2d at 779.

Although the *Robison* test provided a useful framework for determining seaman status, there was no consistency in the application of this test, even within the Fifth Circuit. In particular, a major split developed in the Circuits as to whether a seaman must "aid in navigation" of the vessel. *See generally Wilander*, 111 S. Ct. at 816.

This Court settled the debate in *Wilander* when it held that the "time has come to jettison the aid in navigation language." *Wilander*, 111 S. Ct. at 816. This Court further instructed that the "key to seaman status is employment-related connection to a vessel in navigation." *Wilander*, 111 S. Ct. at 817.

However, this Court declined the opportunity to define this connection in all its details. Specifically not defined was the sufficiency of connection to a vessel necessary for seaman status. *Wilander*, 111 S. Ct. at 817, 818. "We are not asked to determine if the jury could reasonably have found that Wilander had a sufficient connection to the *Gates Tide* to be a 'seaman' under the Jones Act." *Wilander*, 111 S. Ct. at 818.

Although the existing decisions construing the issue of connexity or "permanent assignment" to a vessel were not as sharply divided as those on the aid to navigation question, there was little clarity or uniformity about those decisions. Moreover, the distinctions are becoming more well-defined.

Since *Robison*, the Fifth Circuit's approach to the question of connexity has been embodied in the so-called "first prong" of the test, which sets forth conjunctive and not necessarily consistent requirements. A seaman may either be permanently assigned to a vessel *or* perform a substantial part of his work aboard a vessel. *Kerr-McGee Corp. v. Ma-Ju Marine Services*, 830 F.2d 1332, 1336 (5th Cir. 1987).

Recognizing the inconsistencies associated with this "prong" of the test, the Fifth Circuit has admitted that its decisions construing permanent assignment have been broad in scope. *Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067, 1073 (5th Cir. 1986); *Davis v. Hill Engineering, Inc.*, 549 F.2d 314, 327 (5th Cir. 1977). One commentator has complained that

> there is no clear demarcation between the permanent assignment and substantial work prongs of the *Robison* test for seaman status.

> While the permanent assignment element has been reduced to being "substantial," the substantial work element has been modified to incorporate concepts of a permanent assignment.

Engerrand & Bale, *Seaman Status Reconsidered*, 24 S. Tex. L. J. 431, 481 (1983). Another commentator has even criticized the Fifth Circuit's handling of the test as "illusory" and providing "in fact no rule at all." T. Schoenbaum, *Admiralty and Maritime Law* 179-80 (1987).

Moreover, spurred on in part by this Court's instruction in *Wilander*, the lower courts are now falling out over the question of permanent assignment. The most clear example to have arisen involves the classification of river pilots. The Fifth Circuit has flatly held that a river pilot is not a seaman. *Bach v. Trident Steamship Co.*, 947 F.2d 1290 (5th Cir. 1991), *cert. denied*, 112 S. Ct. 1996 (1992). The Fifth Circuit reached this decision after this Court remanded the case for consideration in light of *Wilander*, *see* 111 S. Ct. 2253 (1991), and over the strong dissent of Judge Brown. The Fifth Circuit panel made it clear that its decision turned on permanent assignment:

> We did not base our decision on Bach's seaman status on the relationship of his duties to navigation. Indeed, this issue was never in doubt. Instead, we concluded that Bach was not a seaman because he was not permanently assigned to any particular vessel or fleet of vessels.

Bach, 947 F.2d at 1291.

The court in *Evans v. United Arab Shipping Co.*, 767 F. Supp. 1284 (D.N.J. 1991), reached the exact opposite result. In the court's own words, "the court must confront an issue explicitly left open by the Supreme Court's recent

decision in *McDermott International, Inc. v. Wilander*, whether a river pilot who is not permanently attached to a ship is a Jones Act seaman." *Evans*, 767 F. Supp. at 1285. The court answered the question by finding that the river pilot had the essential "employment-related connection" to a vessel to be a seaman. *Evans*, 767 F. Supp. at 1291.

The confusion and schism between the courts will no doubt worsen until this Court provides further guidance into the requirements for seaman status.

2. Certiorari should be granted because the Fifth Circuit's requirements for seaman status violate *Wilander*.

This Court's instruction that an "employment-related connection" to a vessel is the *key* to seaman status modifies the Fifth Circuit's test requiring a permanent or substantial connection to a vessel.

"The distinction between the migratory sea-based crewmember and the land-based worker, captured by the requirement of a 'definite and permanent connection with the vessel,' is incompatible with a test which grants seaman status based upon performance of substantial work on a vessel." Engerrand, *Seaman Status Reconstructed*, 32 S. Tex. L. Rev. 169, 181 n.88 (1991).[2] Rather, it is "important that the worker's *duties on the vessel*, not the amount of time spent on it, be coextensive with the duration of the voyage or the assignment of the vessel." *Id.* at 182. The court in *Evans, supra*, also reached this logical conclusion

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[2] 'The Court's reference to a 'definite and permanent connection with the vessel . . .' seems to undercut the viability of *Robison's* substantial part of his work' avenue to Jones Act coverage." Madrid, *Seaman Status: The Supreme Court Recharts Its Course:* Wilander *and* Gizoni, 51 La. L. Rev. 1149, 1166 (1991).

with regard to the classification of river pilots.

Likewise, the facts of the instant case demonstrate the flaw in the Fifth Circuit's definite but arbitrary insistence on substantial work aboard a vessel. Mr. Bolden's assignment to his vessel, the JOHN B, is in its relevant aspects exactly the same as the connection that Jon Wilander, the plaintiff in *Wilander,* had to his vessel. Distinguishing between these two maritime workers on the basis of their substantial work aboard a vessel is indeed illusory.

The Fifth Circut recognized that Mr. Bolden was a "painter/sandblaster" employed by Offshore. App. A-13. It further recognized that the JOHN B was a paint boat "just like the M/V GATES TIDE in *Wilander.*" App. A-14. The Fifth Circuit further found that Mr. Bolden "may well meet the second prong of the *Robison/Barrett* test — that his duties contributed to the function of the M/V JOHN B." App. A-14,15. Finally, just like Jon Wilander, Mr. Bolden had nothing to do with navigation; a separate deck crew was provided on both vessels. *Wilander,* 111 S. Ct. at 817.

However, although both men were at sea living and working on a "paint boat," because of the Fifth Circuit's decision Jon Wilander is a seaman but Mr. Bolden is not. The only difference between these two men is that Jon Wilander may have physically spent more time on his boat, planning the activities of workers like Mr. Bolden, who actually carried out the primary mission of their vessels.

If the JOHN B was a paint boat, as the Fifth Circuit admitted, then Mr. Bolden, as a painter/sandblaster, obviously furthered the mission of the boat. Mr. Bolden's

work was the *raison d'entre*[3] of the JOHN B. Both the JOHN B and Mr. Bolden would have remained at the Texaco platform site until the job of painting was finished. That Mr. Bolden's work took him frequently aboard the platform is not determinative; even Jon Wilander was injured while actually on the stationary platform. *Wilander,* 111 S. Ct. at 809.

In considering the employment-related connection for seaman status, this Court cited language from *Maryland Casualty Co. v. Lawson,* 94 F.2d 190, 192 (5th Cir. 1938), that "[t]here is implied a definite and permanent connection with the vessel, an obligation to forward her enterprise." *Wilander,* 111 S. Ct. at 817. Unquestionably, Mr. Bolden lived and worked on the JOHN B and forwarded the enterprise of the JOHN B. As explained in another of the Fifth Circuit's important precedents, the term seaman "includes all those on board whose labor contributes to the accomplishment of the main object in which the vesseel is engaged." *Osland v. Star Fish & Oyster Co.,* 107 F.2d 113, 114 (5th Cir. 1939) (cited in *Robison,* 266 F.2d at 779 n.12). Mr. Bolden's labor contributed to the accomplishment of the main object in which the vessel was engaged. He cannot be deprived of seaman status because his work carried him off the vessel.

3. Certiorari should be granted because Mr. Bolden should not be denied seaman status by summary judgment.

As this Court explained in *Wilander,* the "inquiry into seaman status is of necessity fact-specific; it will depend

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[3] "Just as Queequeg furthered the *Pequod's* mission, Jon Wilander furthered the *Gates Tide's.* Each man's work was the voyage's *raison d'etre.*" Robertson, *The Law of Seaman Status Clarified,* 23 J. Mar. L. & Com. 1, 8 (1992).

on the nature of the vessel, and the employee's precise relation to it." *Wilander,* 111 S. Ct. at 818. The Fifth Circuit has further stated that the "question of seaman status should only be removed from the trier of fact (by summary judgment or directed verdict) in rare circumstances and that even marginal Jones Act claims should be submitted to the jury." *Bernard v. Binnings Constr. Co., Inc.,* 741 F.2d 824, 827 (5th Cir. 1984.) Further, summary judgment on seaman status is "rarely appropriate." *Prinzi v. Keydril Co.,* 738 F.2d 707, 708-09 (5th Cir. 1984).

As stated above, Mr. Bolden is a maritime worker very similar to Jon Wilander. Jon Wilander was able to present his case to a jury, a jury found him to be a seaman, and this Court upheld that determination. Mr. Bolden's claim should not be dismissed so summarily.

CONCLUSION

For all of the above reasons, this Court should grant certiorari.

Respectfully submitted,

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APPENDIX A

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

FILED
MAY 8 '92

STANFORD BOLDEN	*	CIVIL ACTION
VERSUS	*	No. 91-2160
OFFSHORE EXPRESS, INC., ET AL	*	SECTION "F"

ORDER AND REASONS

Before the Court are motions by Offshore Express, Inc. and B & C Boat Rentals for summary judgment. For the reasons that follow, the motions are GRANTED.

I. *Facts*

In August 1990, the plaintiff was employed by Offshore Express, Inc. as a sandblaster/painter. He was assigned to sandblast and paint Texaco's Platform 154. The plaintiff worked with and was supervised by other Offshore employees. While working on the platform, the plaintiff lived on the M/V JOHN B. He ate and slept on the vessel, and stowed his equipment there. This vessel was owned by B & C Boat Rentals, Inc., and was operated by its employees. B & C did not employ the plaintiff, and did

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not supervise, direct, or control any of his work on the platform. On August 9, 1990, the plaintiff and a co-employee were running some steel cables underneath the platform. The plaintiff claims he was injured when the other worker dropped the cable, causing it to pull out of his hands; he hurt his shoulder and torso. No B & C personnel were on the platform when the alleged injury occurred.

II. *Standard for Summary Judgment*

Fed. R. Civ. P. 56 instructs that summary judgment is proper if the record discloses no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No genuine issue of fact exists if the record, taken as a whole, could not lead a rational trier of fact to find for the nonmoving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). A genuine issue of fact exists only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The mere argued existence of a factual dispute does not defeat an otherwise properly supported motion. *See id.* Therefore, "[i]f the evidence is merely colorable, or is not significantly probative," then summary judgment is appropriate. *Id.* at 249-50 (citations omitted). Summary judgment is proper if the party opposing the motion fails to establish an essential element of his case. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). A good deal of caution in the use of summary relief is important. The Fifth Circuit has written that summary judgment on the issue of seaman status "is rarely appropriate and that even marginal cases ordinarily should go to the jury." *Prinzi v. Keydril Co.*, 738 F.2d 707, 708-9 (5 Cir. 1984). Nevertheless, summary judgment "may be appropriate when there is no evidence from which reasonable persons might draw conflicting inferences on any of the

elements of the seaman test." *Ducote v. Keeler & Co., Inc.*, 953 F.2d 1000, 10003 (5 Cir. 1992); *see also Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067, 1074 (5 Cir. 1986) (en banc). These principles drive the result on the motions pending now.

III. *The B & C Boat Rentals Motion for Summary Judgment*

In its motion for summary judgment, B & C Boat Rentals urges that it cannot be held liable as a matter of law under the Jones Act or the general maritime law for the plaintiff's alleged injury. The Court agrees.

A. *Jones Act Liability*

It is well-settled law that "[t]he express language of the Jones Act requires that an employer-employee relationship exist before liability may be imposed." *Volyrakis v. M/V Isabelle*, 668 F.2d 863, 865 (5 Cir. 1982). In this case, it is an undisputed fact that the plaintiff was not employed by B & C. Similarly, it is undisputed that B & C did not supervise, direct, or control the plaintiff's work on the platform. Consequently, the Court finds that because B & C did not employ the plaintiff it cannot be held liable under the Jones Act for his alleged injuries.

B. *General Maritime Law Negligence Claim*

Once again, it is well-known that "[t]he analysis of a maritime tort is guided by general principles of negligence law." *Consolidated Aluminum Corp. v. C.F. Bean Corp.*, 833 F.2d 65, 67 (5 Cir. 1987). In this case, there is no evidence in the record to even infer that B & C was somehow negligent, and caused the plaintiff's alleged injury. Plaintiff admits that the sole cause of his injury was

the conduct of the co-employee; he let go of the rope, allowing it to pull on plaintiff's right shoulder and torso. It is also undisputed that the B & C employees were not involved with the work on the platform. And most damaging to the plaintiff's claim, is his admission that nothing on the M/V JOHN B caused his injury. Since no evidence in the record suggests that B & C acted improperly in this case, the Court finds that B & C was not negligent under the general maritime law.

C. *Unseaworthiness Claim*

To recover on his unseaworthiness claim, the plaintiff must establish that B & C "provided a vessel (including its appurtances, gear and equipment) that was not reasonably fit for its intended purpose." *Phillips v. Western Co. of North America*, 953 F.2d 923, 928 (5 Cir. 1992). Again, there is no evidence in the record to suggest that the M/V JOHN B was unseaworthy. As previously noted, the plaintiff has already conceded that the M/V JOHN B had nothing to do with his injury. In his opposition to the motion, the plaintiff failed to produce any facts that would contradict his earlier candor. Accordingly, this Court finds that the M/V JOHN B was not unseaworthy at the time of the alleged accident. B & C's motion for summary judgment, therefore, is granted.

IV. *The Offshore Express Motion for Summary Judgment*

The test for determining seaman status is clear. "For almost thirty years, this Circuit has followed the test for seaman status articulated in *Offshore Co. v. Robison* . . . ." *Miller v. Rowan Cos., Inc.*, 815 F.2d 1021, 1025 (5 Cir. 1987). The *Robison* test is perhaps the best-known in all our Circuit literature:

> there is an evidentiary basis for a Jones Act case

> to go to the jury: (1) if there is evidence that the injured workman was assigned permanently to a vessel . . . or performed a substantial part of his work on the vessel; and (2) if the capacity in which he was employed or the duties which he performed contributed to the function of the vessel . . . .

Offshore Co. v. Robison, 266 F.2d 769, 779 (5 Cir. 1959); *see also Barrett v. Chevron, U.S.A., Inc., supra. See generally McDermott Int'l Inc. v. Wilander*, 111 S. Ct. 807 (1991). A plaintiff must satisfy both elements of *Robison* to establish seaman status. In this case, Offshore claims that the plaintiff cannot prove as a matter of law *Robison*'s first hurdle; that he was permanently assigned to the M/V JOHN B, or that he performed a substantial part of his work on this tender vessel.

The Fifth Circuit has previously dealt with the issue of seaman status when the claimant worked on a platform, but lived and performed tasks on a tender vesel. In *Longmire v. Sea Drilling Corp.*, 610 F.2d 1342 (5 Cir. 1980), the court said that the plaintiff did not enjoy seaman status despite the fact that he was injured on a utility vessel. In *Longmire*, plaintiff was employed as a roughneck on a fixed platform. Anchored near the platform and connected by a gangway was a tender vessel, "which provided crew quarters, mess facilities, and the pumps, electrical power, and fuel necessary to operate the drill." *Id.* at 1344. Plaintiff performed his primary duties on the platform. However, he occasionally performed duties on the tender, such as maintenance work, moving equipment to and from the platform, and unloading supplies. At the time of the plaintiff's accident, the drilling rig was being moved to another location. To assist in the move, plaintiff was asked to stow anchor chains on the tender vessel. He was injured while doing so, and sued under the Jones Act for his injuries. The district court granted the employer's motion for summary judgment, finding that plaintiff was not a

seaman. The Fifth Circuit affirmed.

The *Longmire* court found that the plaintiff failed to show that he was either permanently assigned to the tender vessel, or that he performed a substantial amount of his work on the vessel. *Id.* at 1346-47. The Fifth Circuit quickly disposed of the "permanently assigned" issue because the court found no evidence "tending to show that [the plaintiff] was permanently assigned to the vessel." *Id.* at 1346. The panel commented that the "harder question" was whether plaintiff performed a substantial part of his work on the vessel. *Id.* The court recognized that for a plaintiff to show that he " 'performed a substantial amount of work on the vessel it must be shown that he performed a significant part of his work aboard the ship with at least some degree of regularity and continuity.' " *Id.* (quoting *Keener v. Transworld Drilling Co.*, 468 F.2d 729, 732 (5 Cir. 1972)).[1]

The *Longmire* court held that the plaintiff did not perform a significant amount of his work on the tender with some degree of regularity or continuity. His primary duties were on the platform. It was "the symbiotic relationship between the tender and the drilling platform . . ., [that] necessarily carried [the plaintiff] onto the tender from time to time." *Id.* Similarly, *Longmire* pointed out that the tender vessel was "no more than a storeroom or warehouse in relation to the drilling platform." *Id. Longmire* emphasized that "[t]he issue of [seaman status] should be addressed with reference to the nature and location of [the

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[1] In *Barrett v. Chevron, U.S.A., Inc.*, the Fifth Circuit, sitting en banc, described other tests to determine whether a plaintiff performed a substantial amount of his work on a vessel. For example, the court noted that "to be deemed a 'seaman' . . . a claimant [must] have more than a transitory connection with a vessel or a specific group of vessels." *Id.* at 1074 (citations omitted).

plaintiff's] occupation taken as a whole."[2] *Id.* From this broader perspective, the Fifth Circuit concluded that:

> [i]t can hardly be said that [the plaintiff's] incidental activities aboard the tender . . . were sufficient, when viewed in the context of his entire employment as a member of the drilling crew, to amount to performance of "a significant part of his work aboard the ship . . . some degree of regularity and continuity."

Id. (citations omitted). Simply put, plaintiff's primary duties were on the platform, not the vessel.

The Fifth Circuit returned to the issue of seaman status and utility vessels in *Miller v. Rowan Cos., Inc.* In *Miller,* the plaintiff was a fishing tool supervisor, and worked for an oilfield service company. The plaintiff's job was to retrieve tools and pipe from wells. Plaintiff was assigned to both offshore and onshore drilling operations in the course of his employment. In December 1981, plaintiff was working on a fixed platform. Attached to the platform was a tender: it "served as an office, a galley, and a bunkhouse for the drilling crew." *Id.* at 1023. The plaintiff ate and slept aboard the vessel, and performed some incidental tasks as well. He was injured when he fell while entering the vessel. His Jones Act suit failed on a judgment n.o.v.

Relying on *Longmire* and *Barrett,* the Fifth Circuit

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[2] In *Barrett,* the Fifth Circuit adopted this approach, and explained that "if the employee's regularly assigned duties require him to divide his time between vessel and land (or platform) his status as a crew member is determined 'in the context of his entire employment' with his current employer." *Barrett, supra* at 1075. In this case, it is undisputed that the plaintiff worked both onshore and offshore; therefore, the Court will look to the scope of his employment in deciding the issue of seaman status. *See infra.*

said that the plaintiff "failed to present a sufficient evidentiary basis for the jury to find that he was permanently assigned to the tender vessel or performed a substantial part of his work on the vessel." *Miller, supra* at 1026.[3] The court focused first on the plaintiff's work at this location. It was important that the plaintiff performed most of his work on the platform. *Id.* at 1027. The court highlighted that the plaintiff was assigned to work on the platform, not the tender vessel, and as a result, his work on the tender vessel—paper work and tool preparation—was "certainly not a substantial portion of his work while at this location." *Id.*

The Fifth Circuit also looked to the scope of the plaintiff's employment. They found that in "viewing this particular assignment in the context of his entire employment," the plaintiff did not perform a substantial amount of his work on a vessel. *Id.* (citation omitted). In the course of his employment, plaintiff spent little time on tender vessels. Rather, he "was sent out to numerous locations both onshore and offshore, on both fixed and mobile rigs, and for numerous drilling contractors." *Id.* at 1028. The plaintiff, therefore, "did not have a substantial connection to a particular vessel or an identifiable fleet of vesels." *Id.* at 1027. From these facts, the court instructed that:

> [a] primarily land-based worker who is randomly assigned to unrelated vessels to perform essentially nonmaritime tasks does not meet the *Robison* test because he does not have a substantially regular and continuous connection with a vessel or a specific group of vessels.

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[3] In *Miller*, the district court granted defendant Tri-State's request for a judgment n.o.v., concluding that the evidence did not support a finding of seaman status. *Miller* did not arise in a summary judgment context, but it animates this Court's judgment.

Id. As a matter of law, the plaintiff failed to satisfy the first threshold of *Robison*.

In this case, as in *Longmire*, the real issue is whether the plaintiff performed a substantial amount of his work on the tender.[4] Offshore stresses that the plaintiff only had incidental contact with the tender vessel, and that his primary duties were on the platform. Offshore also maintains that the plaintiff's employment duties prove that he did not perform a substantial part of his work on a vessel or fleet of vessels. The plaintiff counters that his work on the tender was substantial, regular, and continuous. According to the plaintiff, he ate and slept on the boat; stowed his gear there; and helped load groceries onto the tender from other vessels. In addition, plaintiff used the tender vessel as a base of operations: the blasting sand was stored on the boat, and the sandblasters ran hoses to blasting pots on the boat. Plaintiff also notes that over half of his employment with Offshore was spent working out of and living on the tender vessel.

On these facts, the Court finds that the plaintiff cannot as a matter of law satisfy the first of the two *Robison* tests. Like the courts in *Miller* and *Longmire*, this Court finds that the plaintiff did not perform a substantial amount of his work on the tender vessel.[5] Simply put, his duties were to sandblast and paint the platform; Offshore employed him as a sandblaster/painter. It did not matter where he was working— onshore or offshore— because his

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[4] It is undisputed that the plaintiff was not permanently assigned to the M/V JOHN B.

[5] In fact, in *Longmire* and *Miller* the plaintiffs had better claims to seaman status than the plaintiff in this case because they were injured while working on the tender vessels. Here, plaintiff was injured while working on the platform. The facts here are even less favorable.

job was to sandblast and paint the structure. Moreover, it is undisputed that the plaintiff never worked on any of the boat equipment, nor did he ever sandblast or paint the vessel.[6] Mindful of the claimants in *Miller* and *Longmire*, the plaintiff here only used the tender for living quarters, and performed some incidental tasks while onboard. The Court finds that these tasks were "certainly not a substantial portion of his work while at this location." *Miller, supra* at 1026.

Similarly, the overall scope of the plaintiff's employment indicates that the plaintiff did not perform "a significant part of his work aboard [a vessel] with at least some degree of regularity and continuity." *Longmire, supra* at 1347. Like the claimant in *Miller,* the plaintiff has worked in a number of different locations as a sandblaster/painter. He has admitted that he worked both on fixed, offshore platforms, and onshore in the company yard. It is, then, clear that plaintiff only had a transitory connection with a vessel or fleet of vessels. Thus, the Court finds as a matter of law that the plaintiff did not perform a substantial part of his work on the tender vessel. In other words, no genuine issue of material fact exists as to whether the plaintiff was permanently assigned to or performed a substantial part of his work on the M/V JOHN B. As a result, plaintiff cannot satisfy the first of the *Robison* tests, and, he cannot be considered a Jones Act seaman.

Accordingly, the Offshore and B & C Rentals motions for summary judgment are GRANTED.

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[6] Like in *Longmire*, it was the symbiotic relationship between the platform and the tender that "necessarily carried him onto the tender from time to time." *Longmire, supra* at 1346.

New Orleans, Louisiana, May 7, 1992.

/s/ Martin L. C. Feldman

MARTIN L. C. FELDMAN
UNITED STATES DISTRICT JUDGE

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

FILED
DEC 11 1992

No. 92-3557
Summary Calendar

STANFORD J. BOLDEN

Plaintiff-Appellant,

versus

OFFSHORE EXPRESS, INC.,

Defendant,

TEXACO, INC., OFFSHORE SPECIALTY FABRICATORS, INC., and B&C MARINE,

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana
(CA-91-2160-F)

Before REAVLEY, HIGGINBOTHAM and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:[1]

Stanford Bolden ("Bolden"), a painter/sandblaster employed by Offshore Specialty Fabricators, Inc. ("OSF"), sued OSF, Texaco, Inc. ("Texaco"), and B&C Marine ("B&C") for injuries he sustained while working on Texaco's Platform No. 154.[2] The district court entered summary judgment in favor of all defendants. Bolden appeals only the summary judgment in favor of OSF on the grounds that the district court erred in holding as a matter of law that he was not covered by the Jones Act. We affirm for the following reasons:

(1) To qualify as a Jones Act seaman, Bolden must show: (1) that he was permanently assigned to a vessel or fleet of vessels *or* that he performed a substantial part of his work on a vessel or fleet of vessels; and (2) that his work contributed to the function or mission of the vessel or fleet. *Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067, 1072-74 (5th Cir. 1986) (en banc) (restating the test announced in *Offshore Co. v. Robison*, 266 F.2d 769, 779 (5th Cir. 1959)).

(2) There is no evidentiary basis for finding that Bolden was permanently attached to either the

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[1] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

[2] This platform is also referred to at places in the record as "Texaco's 365-A fixed platform at Eugene Island." There is, however, no genuine factual dispute about either the fact of Bolden's presence on the platform in question or the location of the platform on which the incident occurred which is the focus of this suit.

M/V JOHN B or any "fleet" of vessels of which the M/V JOHN B was a part.

(3) A fixed drilling platform is *not* a vessel. *Kerr-McGee Corp. v. Ma-Ju Marine Serv.*, 830 F.2d 1332, 1336 (5th Cir. 1987).

(4) Even if we were to take into consideration evidence *provided by OSF* which was made available to the district court *after* its Order and Reasons, dated May 8, 1992, but before its Judgment, dated June 8, 1992, which indicated that Bolden had worked offshore 658 of the 1,038 hours (63.3%) he worked for OSF, it would not improve his position because the relevant question is whether "a substantial part of his work" was performed on a vessel, *Robison*, 266 F.2d at 779, *not* whether he lived on a vessel while working elsewhere.

(5) *Wilander v. McDermott Int'l, Inc.*, 887 F.2d 88 (5th Cir. 1989), *aff'd*, 111 S. Ct. 807 (1991), on which Bolden's "seaman" argument rests, is distinguishable from this case. Bolden's argument that the M/V JOHN B was a "paint boat," just like the M/V GATES TIDE in *Wilander*, 887 F.2d at 90, is well taken. However, the *Wilander* plaintiff was a "paint foreman" who "performed a substantial part of his work, directing the sandblasting and painting of fixed platforms, from the [tender vessel]." *Id.* By contrast, Bolden admittedly performed the bulk of his tasks on the platform.

Thus, while Bolden may well meet the second prong of the *Robison/Barrett* test — that his duties contributed to

the function of the M/V JOHN B — he fails to satisfy the first prong. Therefore, the district court did not err in holding that Bolden was not a Jones Act "seaman."

AFFIRMED.

APPENDIX C

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

STANFORD J. BOLDEN	*	CIVIL ACTION
	*	91-2160
	*	
VERSUS	*	SECTION F
	*	
OFFSHORE EXPRESS, INC.,	*	MAG.
TEXACO, INC., AND	*	
AETNA INSURANCE	*	
COMPANY	*	

* *

PLAINTIFF'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE EXISTS A GENUINE ISSUE TO BE TRIED

Pursuant to Uniform Local Rule 2.10E, plaintiff submits the following statements of material facts as to which there exists a genuine issue to be tried. The statements herein are made solely for purposes of this opposition to defendants' motions for summary judgment:

1. The plaintiff performed his regular work both on the boat, the JOHN B, and on the platform. (Deposition, p. 42.)

2. The plaintiff was aboard the JOHN B for two months, through several different hitches, (Deposition, p. 49-50), almost half of the time he worked for his employer. (Deposition, p. 33.)

3. The mission of the JOHN B was to facilitate the painting and sandblasting performed by the plaintiff.

4. The JOHN B was time chartered by the plaintiff's employer.

5. Mr. Bolden never slept on the Texaco platform or took orders from the Texaco employees. (Deposition, p. 48.)

6. The captain and mates of the JOHN B participated in the plaintiff's work by virtue of the fact they had to position the boat to facilitate the sandblasting operations. (Deposition, pp. 42-45, 83-84.)

7. While on the JOHN B, the plaintiff would have to help provision the boat. (Deposition, pp. 46, 78.)

8. The plaintiff's accident was not caused solely by the fault of his co-employee.

Respectfully submitted:

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JOHN H. MUSSER, IV
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A. Yes, I did.

Q. And what did you do during that four and a half month period for Offshore Specialty Fabricators?

A. Painted, blasted, used to stay out three and four weeks.

Q. During the entire time you were a sandblaster, painter?

A. Right.

Q. Did you work at different platforms?

A. Yes, we worked at different platforms.

Q. That's what you did, you went out to platforms and blasted and painted platforms?

A. Right.

Q. Did you do any work at the yard in Houma?

A. Yes.

Q. Did you blast and paint in the yard?

A. Yes.

Q. All right. Do you know how much of your time or what percentage of your time you worked at the yard as opposed to going offshore to platforms?

A. No, I don't.

Q. Did you always work with the same crew?

A. No.

Q. Did you always work for the same foreman?

A. No.

Q. What foreman did you work for? Or how many were there, tell me first?

A. Maybe three.

Q. What are their names?

A. I worked for Jerry Moore.

Q. Who else?

A. Steve Frederick.

Q. And who was the third?

A. Steve Blake.

Q. Any other foremen?

A. There was another one. I'm trying to think of his name. Craig Martin.

Q. Okay. Any other foremen?

A. Another guy, I can't think of his name. We called him Cornbread. I can't think of his name.

Q. Did you work for any of these foremen in the yard in Houma?

A. I worked for Jerry Moore in the yard of in Houma, under him.

Q. Anyone else in the yard in Houma?

A. Worked under Cornbread.

Q. Okay. Any others that you worked for at the yard?

A. I think those were the only two at the yard.

Q. What does a sandblaster, painter do? Could you just describe the work for me?

A. Well, you blast and paint iron, metal. You blast it first and then you come behind it and blow it off and then you paint it.

Q. Okay. While you worked for Offshore Specialty Fabricators, was the metal you blasted and painted all offshore structures or structures that were going to go offshore?

A. Both ways.

Q. Did you ever blast or paint any boats?

A. Yes.

Q. Where was that, in the yard?

A. Right.

Q. I take it you didn't blast any boats offshore?

A. No.

Q. Just in the yard?

A. Right.

Q. Okay. And when you went offshore, would you do the same sort of blasting and painting on structures that you did in the yard?

A. Right.

Q. That is, the work was esentially the same?

A. Right.

Q. It was just a different location?

A. It was over water.

Q. Okay. And when you went offshore, the metal that you blasted and painted, I take it, would be a structure, a fixed structure or a platform?

A. Right.

Q. And you would go aboard the platforms to do your work, is that correct?

A. Correct.

Q. Okay. How would you get out to the platforms?

A. Well, I've had times get out in a chopper.

Q. Okay.

A. Boats.

Q. Okay.

A. And that's it.

Q. While you were with Offshore Specialty Fabricators, can you tell me what percentage of the time you went out by chopper as opposed to going out by boats?

A. The majority of the time, we went out on chopper.

Q. Okay. Well, would you say you would go out 80 percent of the time on helicopters?

A. It all depends on the job. When I was working if Grand Isle, we used to take a chopper all the time, unless the water was bad, the weather was bad, we'd take a boat.

Q. Can you tell me whether you went offshore by chopper in a certain percentage as opposed to going off by boat or you're unable to say that?

A. I'm unable to say it because on this other job where I got hurt on, we didn't go out no other way but boat.

Q. Okay. What is the date of your injury or your accident or whatever happened? What was the date?

A. I think it was on the 7th of August. I'm, not sure.

Q. August 7th?

A. I think so.

Q. That was be 1990, is that correct?

A. I think you're correct.

Q. Where were you?

A. What you mean, where was I?

Q. Where were you when the accident happened?

A. I was on the bottom of the platform.

Q. Okay. Whose platform?

A. Texaco.

Q. How do you know it was a Texaco's platform?

A. All the guys that work for them. I knew it was a Texaco platform.

Q. Someone told you?

A. Yes.

Q. Okay. Did you see any information on the platform that identified it as a Texaco platform?

A. Well, I mean my foreman told me that.

Q. Okay. Were you on the very bottom level of the platform?

A. Right.

Q. And had you gotten out to that platform by boat?

A. I think we flew out that time.

Q. So, if you flew out by helicopter, it would have landed on the platform?

A. Right, land on the platform, get out the helicopter, brought all our bags to the boat.

Q. I'm sorry.

A. Get out the helicopter, towed all our bags, equipment, I mean, our bags of clothes and bring them on to the boat.

Q. It's your recollection that there was a boat out at the platform?

A. I think so.

Q. What was the name of the boat?

A. I think it was the JOHN B.

Q. You're not sure if it was the JOHN B or not?

A. I think it was.

Q. What makes you think that?

A. I don't know. We used to talk about it. Or the foreman let us know everything because sometimes we need to know all that information.

Q. What kind of boat was it?

A. (no response.)

Q. What kind of boat was it?

A. It was a large boat.

Q. Was it a lift boat, a jack-up boat, a tug boat?

A. A tug boat.

Q. Do you know about how long it was?

A. Maybe 90 feet, 85, something like that.

Q. Did you sleep aboard this boat?

A. Yes, we did.

Q. Where did you eat your meals?

A. On the boat.

Q. All right. So, the boat served as your quarters?

A. Right.

Q. Okay. And you did all your work on the platform?

A. Boat and the platform.

Q. Okay. Did you do any blasting or painting to the boat?

A. No. If we painted and paint got on the boat, we had to clean it out, wash it down, whatever, sand it, blow it down, wash it down and sand it.

Q. If you spilled any of your materials onto the boat, you'd have to clean it, I take it?

A. Right.

Q. Other than cleaning the spilled materials, did you do anything else on the boat?

A. We used to load pit boards off the boat onto the boat.

Q. From the platform to the boat?

A. Right.

Q. That was when you were finished the job?

A. No, when we was going on it, starting it off. Painter will come out on the boat, get on the boat, lift it, stack the paint in the basket or wherever.

Q. Okay. So, during the course of a day, if you hadn't finished blasting and painting, would you leave your boards and your equipment on the platform?

A. Some of the time, yes, all depending on if we weren't finished with it.

Q. That's what I'm asking you: If you weren't finished your work on the platform, would you leave your equipment on the platform?

A. Right.

Q. If you were finished on the platform, what would you do with your equipment?

A. If we was finished.

Q. Yes.

A. We load it back onto the boat.

Q. Would you then go to a different platform or go back to the yard?

A. Well, we would load it on the boat, probably move to another platform, something like that.

Q. So, you'd use the boat to store your blasting and painting equipment?

A. Right, which we would run our hoses and stuff from the boat because we couldn't get it on the platform, so we would have to set it on the boat.

Q. What hoses?

A. Blasting hoses, blasting pots.

Q. Would you ever put the pots on the platform?

A. If we had room. If we didn't, put it on the boat.

Q. If you didn't have room, you'd put the pots on the boat?

A. They be already on the boat, wouldn't move it, just hook up from the boat and run it on the platform.

Q. Did you use the boat for anything else?

A. No, I don't think so.

Q. And did you do anything else on the boat?

A. Other than cleaning it up?

Q. Yes.

A. Load the sand onto the pots on the boat.

Q. Did you do anything else? Was that it?

A. That's approximately it.

Q. Do you know who owned this boat?

A. No, I don't.

Q. Did this boat have a crew of workers that ran the boat?

A. Yes.

Q. How many employees ran the boat?

A. Two captains and a mate.

Q. And I take it that were not employees of Offshore Specialty Fabricators?

A. Right.

Q. Do you know whose workers they were?

A. I guess the boat's workers.

Q. Do you know what company - -

A. No, I don't.

Q. - - employed them?

A. No.

Q. Did the captains and the mate operate the controls of the boat to move it around?

A. Yes.

Q. And did they take care of whatever other equipment there was that was part of the boat?

A. Well, we had to load the groceries and stuff on it, we would help them do that, from off another boat.

Q. If you had to get some groceries, you might help carry them?

A. Yes, we would help carry them.

Q. Okay. I take it there was some equipment that was part of the boat, was there not, there were engines, there were generators?

A. Right.

Q. Was that a equipment maintained, taken care of by the captains and the mate?

A. Yes, I suppose it was.

Q. Okay. I take it you never did any work on the engines or the generators or anything like that?

A. No.

Q. Nor did you ever work on any of the boat equipment, did you?

A. No.

Q. Did you ever sleep on any of the platforms that you worked on?

A. Have I ever slept on platforms before?

Q. While you were employed by Offshore Specialty Fabricators, did you ever sleep in the quarters of a platform as opposed to on a boat?

A. (No response.)

Q. Do you understand the question?

A. No, I don't.

Q. When you were working for Offshore Specialty Fabricators offshore, did you ever sleep overnight on the platform, itself?

A. On that platform?

Q. On any platform.

A. Yes, I have.

Q. And on these occasions, was there a boat present?

A. No, I wouldn't say, not all the time.

Q. Okay. On this particular platform on which you said you were injured, had you slept on that platform?

A. No.

Q. So, I take it, whether you slept on the platform or slept on a boat, really didn't affect your work, which was blasting and painting?

A. No.

Q. Okay. You were out there to blast and paint the platform and not to operate the boat, that's correct?

A. Correct.

Q. While you were on this particular platform, did you ever have any interaction with any platform workers?

A. What do you mean, any - -

Q. Did you ever take any orders from anyone on the platform?

A. On that particular job?

Q. Yes, sir.

A. Not that I can recall.

Q. Not that you can recall?

A. Not that I can recall.

Q. I take it that you took all of your orders from the Offshore Specialty Fabricator's foreman?

A. Right.

Q. And the work that you did was with other Offshore Specialty Fabricators employees?

A. Right.

Q. How long had you been on this particular Texaco platform when you were injured?

A. How long I had been on it?

Q. Yes, how long had you been working as a blaster painter on this platform?

A. You mean that one time or altogether?

Q. Altogether.

A. About two months altogether.

Q. Okay. How long would you work, at any given time, how long was your hitch?

A. Supposed to be 14, 7. I usually stay 21, maybe 30. I think 21 is the most.

Q. Okay. And I take it you had worked more than one hitch at this platform?

A. Right.

Q. And the entire time you were at this platform, you were blasting and painting?

A. Right.

Q. And during that period of time, did you ever have any conversations with any employees of Texaco?

A. Yes.

Q. Why would you have conversations with Texaco people? Would this just be common courtesy?

A. We all talked. I mean, you know, make sure we was being safe, too, you know.

Q. Okay. While you were doing this work, I take it the Offshore Specialty Fabricator's foreman would tell you where to go and what area of the platform to work on?

A. Yes.

* * * * *

talking about on the Texaco platform, had you gone out on a boat? On Texaco now. I'm just talking about the Texaco job.

A. No, I think we went out on a chopper.

Q. So, somethimes you went out on a chopper, sometimes you went out on a boat?

A. Right.

Q. When you went out on a chopper, was the boat already out there?

A. Yes, the boat usually be out there.

Q. During the period of time that you worked on this Texaco job, was the JOHN B the only boat out there or were there other boats?

A. Had the EVANGELINE out there.

Q. Did you have any involvement with the EVANGELINE?

A. I get on the EVANGELINE to unload groceries, from one boat to the other boat to load groceries.

Q. Who was involved with EVANGELINE?

A. I don't know.

* * * * *

A. What, the cable?

Q. Yes.

A. Right.

Q. And then, you're saying he basically let loose with the rope and that caused it to spring forward?

A. Jerk, right.

Q. When that happened, do you know where the tug was?

A. I'm pretty sure it was close to the platform because we have to go back and forth to get stuff off the boat. So, I'm pretty sure it was next to the platform. We wasn't ready to blast. The only time the boat would move is when we're ready to blast and paint.

Q. When you would get ready to blast and paint, what would they do, pull away?

A. Sometimes they would, sometimes they wouldn't.

Q. How about the EVANGELINE?

A. The EVANGELINE bring out groceries and stuff.

Q. Was it there that particular

APPENDIX D

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

STANFORD J. BOLDEN	*	CIVIL ACTION
	*	
VERSUS	*	NO. 91-2160
	*	
OFFSHORE SPECIALTY FABRICATORS, INC., TEXACO, INC. AND AETNA INSURANCE COMPANY	*	SECTION "F",
	*	MAG. 5
	*	
**********	*	

MOTION AND ORDER TO FILE MEMORANDUM OF OFFSHORE SPECIALTY FABRICATORS, INC. REGARDING THE MOTION FOR SUMMARY JUDGMENT OF TEXACO, INC. AND AFFIDAVIT

COMES NOW, Offshore Specialty Fabricators, Inc., defendant in the above-styled and numbered cause, appearing through undersigned counsel, and moves for leave of Court to file the attached Memorandum and Affidavit, on the grounds that they will assist the Court in its consideration and disposition of the Motion For Summary Judgment of Texaco, Inc.;

IT IS ORDERED that leave of Court be, and is hereby, granted to Offshore Specialty Fabricators, Inc. to file its Memorandum Regarding The Motion for Summary Judgment of Texaco, Inc. And Affidavit of Ms. Jamie Domangue.

New Orleans, Louisiana, this ____ day of May, 1992.

UNITED STATES DISTRICT JUDGE

Respectfully submitted,

/s/ Miles P. Clements

MILES P. CLEMENTS, T.A., #4184
LEMLE & KELLHER
2100 Pan-American Life Center
601 Poydras Street
New Orleans, Louisiana 70130
Telephone: 504/586-1241

Attorneys for:
Offshore Specialty Fabricators, Inc.

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 19th day of May, 1992, served a copy of the foregoing pleading on counsel for all parties to this proceeding, by mailing the same by United States mail, properly addressed, and first class postage prepaid.

/s/ Miles P. Clements

MILES P. CLEMENTS

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

STANFORD J. BOLDEN	*	CIVIL ACTION
	*	
VERSUS	*	NO. 91-2160
	*	
OFFSHORE SPECIALTY FABRICATORS, INC., TEXACO, INC. AND AETNA INSURANCE COMPANY	*	SECTION "F",
	*	MAG. 5
	*	
	*	
**********	*	

MEMORANDUM OF OFFSHORE SPECIALTY FABRICATORS, INC. REGARDING THE MOTION FOR SUMMARY JUDGMENT OF TEXACO, INC.

MAY IT PLEASE THE COURT:

Plaintiff, Stanford Bolden, asserted in his Complaint that Texaco, Inc., among others, was liable for his personal injuries and that he was a member of the crew of the Texaco platform. Texaco, Inc. has moved for summary judgment, seeking to be dismissed from this litigation. Defendant, Offshore Specialty Fabricators, Inc., submits this Memorandum in support of the motion of Texaco.

At all material times, plaintiff was an employee of Offshore Specialty Fabricators, Inc. (see Affidavit of Ms. Jamie Domangue, and documents marked for identification as Exhibit "A"). Plaintiff's allegations against Texaco are as unfounded as those which have been asserted against Offshore Specialty Fabricators, Inc.

Accordingly, summary judgment should be entered

on behalf of Texaco, Inc., dismissing the remaining claims in this civil action.

Respectfully submitted,

/s/ Miles P. Clements

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#4184
LEMLE & KELLEHER
2100 Pan-American Life Center
601 Poydras Street
New Orleans, Louisiana 70130
Telephone: 504/586-1241

Attorneys for:
Offshore Specialty Fabricators, Inc.

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/s/ Miles P. Clements

MILES P. CLEMENTS

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

STANFORD J. BOLDEN	*	CIVIL ACTION
	*	
VERSUS	*	NO. 91-2160
	*	
OFFSHORE SPECIALTY FABRICATORS, INC., TEXACO, INC. AND AETNA INSURANCE COMPANY	*	SECTION "F", MAG. 5
	*	
	*	
**********	*	

AFFIDAVIT

STATE OF LOUISIANA §
§
PARISH OF ORLEANS §

BEFORE ME, the undersigned authority, personally came and appeared:

JAMIE DOMANGUE

who, after being duly sworn did depose and say:

She is the Assistant Personnel Manager of Offshore Specialty Fabricators, Inc. (hereinafter "OSF"). She is familiar with the work assignments of OSF personnel and is custodian of all documents generated in connection with the work assigned and performed by OSF employees. She held her position as Assistant Personnel Manager for OSF during 1990, including the period in which Mr. Stanford Bolden was employed by OSF.

She has reviewed the OSF records, including weekly time reports and payroll records, containing the work assignments of Mr. Bolden during the entire course of his employment, and is thus knowledgeable of the hours he worked, location, work description and any vessel which may have been in any way involved in his work. The work records pertaining to Mr. Bolden are attached hereto and marked for identification as Exhibit "A".

Mr. Bolden began his work for OSF during the week ending April 8, 1990 and was assigned to the OSF yard in Houma, Louisiana where he remained through the week ending May 6, 1990. During that period of time, which consisted of a total of 152 hours of work by him, he worked in fabrication and conversion of the Barge NOOTKA CARRIER.

Thereafter, for the week ending May 16, 1990 through June 6, 1990, Mr. Bolden worked a total of 250 hours on various platforms in the Ship Shoal, Eugene Island, Vermillion and South Marsh Island areas. All of his work during said period involved blasting and painting on numerous fixed platforms. During that period, he slept aboard the M/V ANDREW CHERAMIE.

For the week ending July 15, 1990 through August 26, 1990, Mr. Bolden worked a total of 408 hours at Texaco's 365-A fixed platform located at Eugene Island. Mr. Bolden worked as a blaster/painter performing all of his work on the fixed platform. During that period of time, he lived on the M/V JOHN B. Mr. Bolden made regular crew changes during that period and was transported by helicopter between shore and the fixed platform.

For the week ending September 9, 1990 through September 23, 1990, Mr. Bolden worked a total of 228

hours blasting and painting the VIKING RIG NO. 5, which was located at a shipyard at Sabine Pass. He traveled by motor vehicle to and from Sabine Pass and no support vessel was involved in his work. Mr. Bolden last worked for OSF on September 23, 1990.

During all of the aforesaid dates, Mr. Bolden was employed by Offshore Specialty Fabricators, Inc. He was not employed by Texaco during that period of time nor was he a member of any Texaco crew.

The foregoing is true and correct.

/s/ Jamie Domangue
JAMIE DOMANGUE

Sworn to and subscribed before
me this 19 day of May, 1991.

/s/ Illegible
NOTARY PUBLIC

OPPOSITION

BRIEF

Supreme Court, U.S.
FILED
MAY 10 1993
OFFICE OF THE CLERK

NO. 92-1494

In the Supreme Court of the United States

OCTOBER TERM, 1992

STANFORD J. BOLDEN,
Petitioner,

versus

OFFSHORE SPECIALTY FABRICATORS, INC.,
Respondent.

ON A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTION PRESENTED

Whether the courts below properly held on summary judgment that Petitioner failed to satisfy the requisites necessary for status as a Jones Act seaman.

LIST OF PARTIES

Petitioner: Stanford J. Bolden

Respondent: Offshore Specialty Fabricators, Inc.[1]

Petitioner, Stanford J. Bolden ("Bolden"), originally brought suit against Offshore Express, Inc., Texaco, Inc. ("Texaco"), and Aetna Casualty & Surety Company ("Aetna") (incorrectly referred to by plaintiff as "Aetna Insurance Company") in the United States District Court for the Eastern District of Louisiana. Petitioner thereafter amended his complaint to substitute Offshore Specialty Fabricators, Inc. ("OSF") for Offshore Express, Inc. and to add Guilbeau Marine, Inc. as a defendant. Bolden, however, subsequently dismissed Guilbeau Marine, Inc. and substituted B & C Boat Rentals, Inc. ("B & C Boat Rentals") (incorrectly referred to by plaintiff as "B&C Marine"). Upon joint motion of the parties, the District Court entered an order dismissing Aetna as a defendant and permitted Aetna to intervene for reimbursement of worker's compensation and medical payments. The District Court thereafter granted motions for summary judgment dismissing OSF, Texaco, and B & C Boat Rentals and entered a final judgment. Petitioner appeals only from the judgments dismissing the claims and demands made against OSF.

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[1] Respondent, Offshore Specialty Fabricators, Inc., owns no subsidiaries. Offshore Express, Inc. is its parent company and owns one-hundred percent of the stock of Offshore Specialty Fabricators, Inc. McAllister Towing & Transportation, Inc. is the parent company and owns one-hundred percent of the stock of Offshore Express, Inc.

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OPINIONS BELOW

The United States District Court for the Eastern District of Louisiana entered an unpublished order and reasons on May 8, 1992, and entered an amended order and reasons on May 19, 1992, granting summary judgment in favor of Offshore Specialty Fabricators, Inc. and B & C Boat Rentals, Inc. (Pet. App. A; Resp't App. B.) The District Court further entered an order on May 22, 1992, granting an unopposed motion for summary judgment dismissing Texaco, Inc. from this action. On June 9, 1992, the District Court entered a final judgment dismissing the plaintiff's suit. The United States Court of Appeals for the Fifth Circuit subsequently filed an unpublished, per curiam opinion on December 11, 1992, reported by table at *Bolden v. Offshore Express, Inc.*, 980 F.2d 1445 (5th Cir. 1992), in which it afffirmed the District Court's judgment. (Pet. App. B; Resp't App. A at A-3.) Petitioner did not seek a rehearing before the United States Court of Appeals for the Fifth Circuit prior to filing his petition herein.

JURISDICTION

Petitioner invokes this Court's jurisdiction pursuant to Section 1254(1) of Title 28, United States Code, which permits this Court to review cases in the courts of appeals by a writ of certiorari.

STATUTE INVOLVED

The statute involved is the Jones Act, 46 U.S.C. app. § 688:

> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

No. 92-1494

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

STANFORD J. BOLDEN,
Petitioner,

versus

OFFSHORE SPECIALTY FABRICATORS, INC.,
Respondent.

ON A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

PRELIMINARY STATEMENT

Respondent, Offshore Specialty Fabricators, Inc. ("OSF"), respectfully files this brief in opposition to the petition for a writ of certiorari and requests that this Court deny such petition seeking review of the lower courts' decisions in this case.

COUNTERSTATEMENT OF THE CASE

Petitioner, Stanford J. Bolden ("Bolden"), filed a complaint in the United States District Court for the Eastern District of Louisiana on June 12, 1991. In this complaint, Bolden alleged causes of action for negligence based on the Jones Act, 46 U.S.C. app. § 688, and for unseaworthiness based on the General Maritime Law arising out of injuries he allegedly sustained while employed by OSF as a sandblaster/painter on August 9, 1990.

Bolden began working for OSF in April 1990. OSF owns and operates an on-shore fabrication facility in Houma, Louisiana. OSF employed Bolden to perform sandblasting and painting at the fabrication yard and, on occasion, to perform the same work on fixed platforms in the Gulf of Mexico. During the period from April 8, 1990, through September 23, 1990, Bolden worked some 380 hours either in OSF's yard or at a shipyard reached by automobile and some 658 hours on fixed platforms in the Gulf of Mexico. (Pet. App. D at A-40 to A-41.) Petitioner, however, essentially performed the same work whether in OSF's yard or offshore.

Petitioner specifically had been assigned during August 1990 to sandblast and paint Texaco's platform 154, a fixed platform facility located in the Gulf of Mexico. During such assignment, Bolden slept and ate his meals aboard the M/V JOHN B since Texaco did not provide crew quarters for OSF's workers aboard its platform. The M/V JOHN B, a vessel owned and operated by B & C Boat Rentals, Inc., possessed a full crew to perform all navigation and catering services. Bolden had not used the M/V JOHN B as a means of transportation to the Texaco platform but rather had been transported by helicopter.

Bolden did not perform any sandblasting or painting to and/or from the M/V JOHN B—a vessel described by him as a large tugboat some ninety to ninety-five feet in length. Petitioner sometimes stored equipment such as pit boards, blasting hoses, and pots aboard the vessel but, if not finished by the end of the day, would leave such equipment on the platform upon which he had been working. Bolden only used the vessel on occasion to clean materials used on the platform or to load sand into pots. His work, however, took place on the platform and did not otherwise involve or require a vessel.

B & C Boat Rentals and OSF filed motions for summary judgment in the District Court. OSF contended that Petitioner failed to possess the requisite connection with a vessel to attain the status of a Jones Act seaman. B & C Boat Rentals argued that no liability could be imposed against it under the Jones Act because OSF employed Bolden and under the General Maritime Law because no facts established negligence or unseaworthiness. On May 8, 1992, the District Court entered an order and reasons in which it granted both motions based on the undisputed facts that Petitioner had not been permanently assigned to and/or had not performed a substantial amount of work on the M/V JOHN B.

The District Court thereafter granted an unopposed motion for summary judgment and entered an order on May 22, 1992, dismissing Texaco from this action. Having dismissed the claims and demands against all defendants, the trial court entered a final judgment on June 9, 1992. Petitioner subsequently appealed this final judgment to the United States Court of Appeals for the Fifth Circuit.

The Fifth Circuit filed a per curiam decision on December 11, 1992, in which it affirmed the District Court

based on its finding that Petitioner failed to meet the test for Jones Act seaman status. Notwithstanding Petitioner's representations to the contrary, neither the District Court nor the Court of Appeals made a "finding" that the M/V JOHN B was a "paint boat." The Court of Appeals merely noted Petitioner's arguments in this regard to be "well taken" but found that "Bolden . . . performed the bulk of his tasks on the platform." (Pet. App. B at A-14.) Thus, having failed to satisfy the first prong of the test for seaman status, the Fifth Circuit affirmed the District Court's judgment.

REASONS WHY THE WRIT SHOULD BE DENIED

1. The first question presented by Petitioner involves an issue not litigated in the courts below.

The first question presented by Petitioner seeks review for the purpose of determining whether the courts below "violated" this Court's decision in *McDermott International, Inc. v. Wilander*, 498 U.S. 337, 111 S. Ct. 807, 112 L. Ed. 2d 866 (1991). Petitioner, however, failed to raise such issue prior to his petition for a writ of certiorari.

Petitioner's first question involves a contention that the courts below "violated" *Wilander* by allegedly requiring more than an "employment-related connection" to a vessel to satisfy Jones Act seaman status. *Id.* at ____, 111 S. Ct. at 817, 112 L. Ed. 2d at 882. The papers filed in the District Court and the Court of Appeals by Petitioner merely sought a reconsideration of the permanency requirement for seaman status. Bolden, however, did not raise an alleged conflict with *Wilander* nor any allegedly conflicting decisions from the courts of appeals in the pleadings below.

This Court usually "does not decide questions not

raised or resolved in the lower court[s]." *Youakim v. Miller*, 425 U.S. 231, 234 (1976); *see Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 147 n.2 (1970). Thus, in this instance, the petition for a writ of certiorari seeking review of the lower courts' decisions should be denied.

2. **The Fifth Circuit's alleged violation of *Wilander* lacks merit because the instant matter involves both legal and factual distinctions.**

The distinguishable factual and legal issues involved herein defeat Petitioner's contention that an alleged violation of *Wilander* warrants this Court's attention. Such distinction undermines the reasons provided by Petitioner for granting a writ of certiorari in this matter.

The District Court and the Court of Appeals both found that, unlike Jon C. Wilander, Petitioner Bolden performed the "bulk" of his tasks on a fixed platform rather than a vessel. (Pet. App. A at A-10, B at A-14.) Unlike the instant case, *Wilander* involved a plaintiff assigned to and working on a "paint boat" specially-equipped with sandblasting and painting equipment for use in the vessel's mission. Furthermore, unlike Mr. Bolden, this Court and the courts below specifically found that Mr. Wilander's permanent assignment and/or performance of a substantial amount of his work aboard such vessel satisfied seaman status without requiring him to aid in the navigation of the vessel. Such findings in *Wilander* contrasted to the findings herein make Petitioner's status as a worker assigned to sandblast and to paint a fixed platform clearly distinguishable on both legal and factual grounds. This distinction does not involve any alleged "violation" of *Wilander* to the Petitioner's detriment but rather the application of a clearly-defined rule of law to specific, uncontested facts.

Petitioner also confuses the relevance of this Court's reference in *Wilander* to an "employment-related connection" to a vessel. In essence, Petitioner asserts that his relationship to the M/V JOHN B allegedly proves his status as a seaman like Mr. Wilander because it satisfies an "employment-related connection" to a vessel. The "employment-related connection" referred to by Petitioner pertains to the second prong of the seaman status test requiring performance in the furtherance of the vessel's work or mission rather than the more stringent aiding in the vessel's navigation. *See Wilander*, 498 U.S. at ____, 111 S. Ct. at 817, 112 L. Ed. 2d at 882. The courts below, however, found that Petitioner Bolden failed to meet the *first prong* of the Jones Act seaman status test in that he lacked a permanent assignment to and/or performance of a substantial part of his work aboard a vessel. Petitioner, therefore, misplaces his arguments in this regard.

The decisions relied upon by Petitioner (including *Wilander*) fail to present analogous factual and legal situations to the case at bar. The petition for a writ of certiorari, therefore, lacks merit on this ground.

3. **The courts of appeals have not conflicted on the degree of connection to a vessel necessary to qualify for seaman status.**

Petitioner next contends without merit that a "dispute" among the courts of appeals requires the granting of the writ. The fact that the petition for a writ of certiorari fails to cite even one case from a court of appeals other than the Fifth Circuit belies the very premise of this first assertion.

The former dispute over the test for seaman status reached this Court a little more than two years ago in

Wilander. In *Wilander*, the issue involved "whether one must aid in the navigation of a vessel in order to qualify as a 'seaman' under the Jones Act, 46 U.S.C. App. § 688." *Id.* at ____, 111 S. Ct. at 809, 112 L. Ed. 2d at 872. The Court agreed to decide such issue because a genuine conflict had existed for some years between the courts of appeals. *Compare Offshore Co. v. Robison*, 266 F.2d 769 (5th Cir. 1959) (requiring seaman to contribute to function of vessel or accomplishment of its mission) *with Johnson v. John F. Beasley Constr. Co.*, 742 F.2d 1054 (7th Cir. 1984) (employing "aid in navigation" test for seaman status), *cert. denied*, 469 U.S. 1211 (1985). *See generally* Eileen R. Madrid, *Seaman Status: The Supreme Court Recharts Its Course:* Wilander *and* Gizoni, 51 La. L. Rev. 1149, 1149-50 (1991) ("*Wilander* resolved the longstanding conflict between the Fifth Circuit, on the one hand, and the Third, Seventh, and Ninth Circuits, on the other hand"). The *Wilander* case resulted in the Supreme Court implicitly accepting the test for seaman status formulated in *Robison* and settling an important judicial dispute by "jettisoning" the aid in navigation requirement.

The instant matter, however, simply does not involve any such dispute nor any other issue warranting the attention of this Court. In essence, Petitioner argues that *Wilander* spurred a "falling out" over the first prong of the *Robison* test for seaman tests. Circuit Judge John Minor Wisdom stated such test more than thirty years ago as follows:

> [T]here is an evidentiary basis for a Jones Act case to go to the jury: (1) if there is evidence that the injured workman was assigned permanently to a vessel . . . or performed a substantial part of his work on the vessel; and (2) if the capacity in which he was employed or the duties which he

> performed contributed to the function of the vessel or to the accomplishment of its mission
> . . . .

Robison, 266 F.2d at 779; *see Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067, 1072 (5th Cir. 1986) (en banc). The "first prong" of the *Robison* test (as re-affirmed by *Barrett*), therefore, requires either a permanent assignment to or performance of a substantial part of one's work on a vessel.

The courts of appeals have not disputed the degree of connection necessary to satisfy such first prong—notwithstanding Petitioner's attempts to argue otherwise. The only "conflicting" decisions even referenced by Bolden involve two cases where the Fifth Circuit and the United States District Court for the District of New Jersey reached different opinions regarding compulsory pilots. *See Bach v. Trident S.S. Co.*, 947 F.2d 1290 (5th Cir. 1991), *cert. denied*, ____ U.S. ____, 112 S. Ct. 1996, 118 L. Ed. 2d 592 (1992); *Evans v. United Arab Shipping Co.*, 767 F. Supp. 1284 (D.N.J. 1991). The *Bach* and *Evans* decisions, however, do not evidence any conflict among the courts of appeals but, rather, a difference of opinion between a court of appeals and a district court resulting from the fact-specific application of an established legal principle. Such difference of opinion does not warrant intervention by this Court in the instant matter.

The first prong of the *Robison* test for seaman status represents a clearly-defined and established legal principle that has proven its worth for more than thirty years. Petitioner's attempts to establish some conflict among the courts of appeals lack merit and warrant denial of the petition for a writ of certiorari.

4. The courts below properly granted summary judgment under the prevailing legal standards.

Petitioner's final argument in support of granting a writ of certiorari relies upon his assertion that the lower courts erred in granting summary judgment denying him seaman status. Such argument, however, falls woefully short of providing a sufficient basis for the Court's review of this matter.

Rule 56(c) of the Federal Rules of Civil Procedure provides that "judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). When a moving party satisfies the requisites of Rule 56(c), a motion for summary judgment should be granted. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The inferences drawn from the underlying facts, however, must be viewed in a light most favorable to the nonmoving party. *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 588 (1986). Finally, the substantive law determines materiality of facts and only "facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Both the District Court and the Court of Appeals properly applied these standards in deciding this action.

The jurisprudence noting the tests of seaman status to be a fact-specific inquiry or mixed question of law and fact provides Petitioner with no comfort. The undisputed record in the courts below established summary judgment on seaman status to be proper because Petitioner lacked

any permanent connection to a vessel and/or failed to perform a substantial part of his work on a vessel rather than on Texaco's fixed platform. Notwithstanding Petitoner's attempts to liken himself to the plaintiff in *Wilander*, the factual record does not lend itself to such result. Summary judgment remains proper where a party fails to place a material fact into dispute regardless of the particular status allegedly occupied by such party. Petitioner's attempt to create a new summary judgment standard governing seaman cases and effectively precluding use of such procedure in cases like this one lacks merit.

Both the District Court and the Court of Appeals applied the proper legal standard in rendering judgments adverse to Petitioner on the issue of seaman status. No basis, therefore, exists to support the granting of a writ of certiorari on this ground.

CONCLUSION

For the foregoing reasons, the Petition for a writ of certiorari filed by Petitioner, Stanford J. Bolden, should be denied.

Respectfully submitted,

/s/ Miles P. Clements

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Attorneys for Respondent, Offshore Specialty Fabricators, Inc.

*Counsel of Record

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 11th day of May, 1993, served three copies of the foregoing pleading on counsel for all parties to this proceeding, by mailing the same by United States mail properly addressed, and first class postage prepaid.

/s/ Miles P. Clements

MILES P. CLEMENTS

APPENDIX A

DECISIONS WITHOUT PUBLISHED OPINIONS

1443

UNITED STATES COURT OF APPEALS

Fifth Circuit

DECISIONS WITHOUT PUBLISHED OPINIONS

The following cases have been decided without formal opinion prepared for publication in the permanent law reports:

Title	Docket Number	Date of Decision	Disposition	Appeal from and Citation (if reported)
Owen v. C.I.R.	91-4806	11/30/92	AFFIRMED	U.S.T.C.
U.S. v. Sandoval	91-5550	11/30/92	REVERSED	W.D.Tex.
U.S. v. Bragg	91-7044	11/30/92	AFFIRMED IN PART	N.D.Tex.
U.S. v. Sandoval	92-5585	11/30/92	DISMISSED	W.D.Tex.
*U.S. v. Tamez	91-2843	12/1/92	AFFIRMED	S.D.Tex.
*Matthews v. Whitley	91-3875	12/1/92	AFFIRMED	E.D.La.
*Roberts v. Willanks	92-1495	12/1/92	AFFIRMED	N.D.Tex.
U.S. v. Johnson	92-3150	12/1/92	AFFIRMED	E.D.La.
*Patton v. Alford	92-4010	12/1/92	AFFIRMED	E.D.Tex.

*Fed.R.App.P. 34(a); 5th Cir.R. 34.2. — †Local Rule 47.6 case.

Title	Docket Number	Date of Decision	Disposition	Appeal from and Citation (if reported)
*Kowey v. Collins	92-2054	12/10/92	AFFIRMED	S.D.Tex.
Resolution Trust v. Pardo	92-8181	12/10/92	AFFIRMED	W.D.Tex.
*Southern Comfort v. Federal Home	91-3850	12/11/92	AFFIRMED	E.D.La.
*Anderson v. Thompson	92-1558	12/11/92	AFFIRMED	N.D.Tex.
*Holland v. Albright	92-2346	12/11/92	REVERSED	S.D.Tex.
*Grice v. Aetna Life Ins.	92-2457	12/11/92	AFFIRMED	S.D.Tex.
*Bolden v. Offshore Exp., Inc.	92-3557	12/11/92	AFFIRMED	E.D.La.
Brice v. Rowan Companies, Inc.	92-4041	12/11/92	AFFIRMED	E.D.Tex.
*U.S. v. Trevino	92-5620	12/11/92	AFFIRMED	W.D.Tex.
*Foster v. Globe Life/ Accident Ins	92-7370	12/11/92	AFFIRMED	ND.Miss., 808 F.Supp. 1281

*Fed.R.App.P. 34(a); 5th Cir.R. 34.2. — †Local Rule 47.6 case.

APPENDIX B

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

STANFORD J. BOLDEN	*	CIVIL ACTION
	*	
VERSUS	*	NO. 91-2160
	*	
OFFSHORE EXPRESS,	*	
INC.,	*	SECTION "F",
TEXACO INC., AND	*	MAG. 5
AETNA INSURANCE	*	
Company	*	

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SUPPLEMENTAL ORDER AND REASONS

Considering the Motion To Amend Order And Reasons Granting Motions For Summary Judgment, the Court hereby amends its Order And Reasons of May 7, 1992, by substituting Offshore Specialty Fabricators, Inc. for Offshore Express, Inc.

New Orleans, Louisiana, this 18th day of May, 1992.

/s/ Martin L. C. Feldman

UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

STANFORD J. BOLDEN	*	CIVIL ACTION
	*	
VERSUS	*	NO. 91-2160
	*	
OFFSHORE EXPRESS,	*	
INC.,	*	SECTION "F",
TEXACO INC., AND	*	MAG. 5
AETNA INSURANCE	*	
Company	*	

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STATEMENT OF UNCONTESTED MATERIAL FACTS

In accordance with Rule 2.09, Uniform District Court Rules, Offshore Specialty Fabricators, Inc. submits the following statement of the material facts as to which there is no genuine issue to be tried (references herein are to the transcript of the sworn deposition given by Stanford J. Bolden on February 17, 1992, attached as Exhibit "A").

1. Plaintiff, Stanford J. Bolden, does not hold any Coast Guard or related professional licenses and has never attempted to obtain any (p.10).

2. Plaintiff worked for Offshore Specialty Fabricators for approximately 4-1/2 months during the spring and summer of 1990. During that time he worked as a sandblaster/painter and worked on various fixed platforms and at the yard in Houma (p.34).

3. Plaintiff did not always work with the same crew nor with the same foreman (p.35).

4. Plaintiff would blast and then paint iron and metal for structures which were either offshore or were being fabricated in the yard for subsequent transportation offshore (p.36).

5. Plaintiff performed some blasting and painting to vessels only in the yard (in Houma). Plaintiff did not perform such work on any boats offshore (pp. 36-37).

6. Plaintiff's blasting and painting offshore was on fixed structures or platforms (p.37). He also blasted and painted such structures onshore in the yard.

7. Plaintiff would go aboard the platforms to do his work (p.38). Plaintiff contends that he was injured on a platform while performing his regular work (p.39).

8. The majority of the time that plaintiff travelled offshore to work for Offshore Specialty Fabricators on platforms, he was transported by helicopter (p.38).

9. Plaintiff contends that he was injured on August 7, 1990 on the bottom of a fixed platform owned by Texaco (p.39).

10. Plaintiff had been transported to the Texaco platform by helicopter (p.40).

11. During the period of time that plaintiff was assigned to work on the Texaco platform, plaintiff kept his bags and clothes on a vessel which the plaintiff recalled was the JOHN B, which he estimates to be approximately 85' to 90' long. Plaintiff slept and ate his meals aboard the

JOHN B (pp. 41-42). The plaintiff did not do any blasting or painting to the JOHN B (p.42).

12. According to plaintiff, the JOHN B was used to store pit boards, hoses and equipment used to perform the work on the platform. Plaintiff would occasionally load sand into his pots while on the boat and, if he spilled materials, he would clean it (pp. 42-45).

13. The JOHN B was owned by B&C Boat Rentals, Inc. (see plaintiff's Complaint as amended and Motion for Summary Judgment of B&C Boat Rentals, Inc.).

14. The JOHN B had its own crew of workers that ran the boat, including two captains and a mate, none of whom were employees of Offshore Specialty Fabricators. The captain and the mate operated the controls of the JOHN B and maintained the vessel's equipment (pp. 45-46).

15. Plaintiff never performed any work on the engines or generators or on any of the boat equipment (p.47).

16. On some of his jobs offshore, plaintiff would sleep on the platform itself. On some occasions there was no vessel present or in any way involved in plaintiff's assignment (pp. 47-48).

17. Whether plaintiff slept on a platform or on a boat did not affect his work. His function was to blast and paint the platform and not to operate the boat (p.48).

18. All of plaintiff's orders came from the Offshore Specialty Fabricators foreman and all of his work was with the other Offshore Specialty Fabricators employees (p.49).

19. Plaintiff contends that he and a co-worker, Mr. James Gaither, were rigging up cable and boards in preparation of blasting and painting on the bottom level of the Texaco platform on August 7, 1990. While the two Offshore Specialty Fabricators' employees were attempting to lift a cable, plaintiff says that he was laying on his stomach on the platform grating and holding the cable with one hand. Plaintiff contends that Mr. Gaither dropped the cable and that it jerked plaintiff, pulling his right shoulder. Plaintiff contends that an insufficient number of workers was assigned to the task (pp. 52-61).

20. Plaintiff did not do any blasting and painting while on the JOHN B (p.79).

21. The vessel (JOHN B) crew did not get involved in rigging up the platform or blasting and painting (p.82).

/s/ Miles P. Clements

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